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Saticoy Bay LLC Series 8891 Sanibel Shore Avenue

8  
9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 DITECH FINANCIAL LLC a Delaware  
12 Corporation,

13 Plaintiff,

14 vs.

15 CLEARWATER COVE HOMEOWNERS  
ASSOCIATION, a Nevada non-profit  
16 corporation; SATICOY BAY LLC SERIES  
8891 SANIBEL SHORE AVENUE, a Nevada  
17 corporation, RED ROCK FINANCIAL  
SERVICES, a Nevada corporation,

18 Defendant.

CASE NO.: 2:18-cv-00250-RFB-BNW

19  
20 **ORDER ON MOTION FOR SUMMARY JUDGMENT**

21 The motion of defendant Saticoy Bay LLC Series 8891 Sanibel Shores Avenue for summary  
22 judgment (ECF No. 37), and the joinder of Clearwater Cove Homeowners Association (ECF No. 40)  
23 having come before the court on the 25<sup>th</sup> day of July 2019, Andrew A. Bao, Esq. appearing on behalf of  
24 plaintiff Ditech Financial, LLC, Michael F. Bohn, Esq. appearing on behalf of defendant Saticoy Bay  
25 LLC Series 8891 Sanibel Shores Avenue, and Margaret E. Schmidt, Esq. appearing on behalf of  
26 defendant Clearwater Cove Homeowners Association, and the court having reviewed the motions for  
27 summary judgment, joinder, oppositions to the motion, and reply and having heard the arguments of

1 counsel, finds as follows.

2 **FINDINGS OF FACT**

3 1. The property in issue in this case is the residential real property commonly known as 8891  
4 Sanibel Shore Avenue, Las Vegas, Nevada and further identified by Assessor's Parcel Number 163-17-  
5 719-059. (hereinafter referred to as the "Property").

6 2. The Property is encumbered by CC&R's in favor of defendant Clearwater Cove Homeowners  
7 Association.

8 3. Plaintiff Ditech Financial is the beneficiary of a deed of trust which was recorded as an  
9 encumbrance to the Property.

10 4. The former owner of the Property is Joshua C. Cheng.

11 5. Joshua C. Cheng became delinquent in the assessments owed to defendant Clearwater Cove  
12 Homeowners Association.

13 6. Red Rock Financial Services was the collection agent acting on behalf of Clearwater Cove  
14 Homeowners Association.

15 7. Red Rock Financial Services acting on behalf of Clearwater Cove Homeowners Association  
16 began foreclosure proceedings against the property pursuant to NRS Chapter 116.

17 8. On December 14, 2017 the foreclosure sale was conducted, and the property was purchased  
18 by Saticoy Bay LLC Series 8891 Sanibel Shore Avenue for the total sum of \$90,100.00.

19 9. A certificate of sale was recorded with the Clark County Records office on December 19,  
20 2017.

21 10. The 60 day period to redeem the property pursuant to NRS 116.31163(3) ended on Monday,  
22 February 12, 2018.

23 11. The first communication that was made by plaintiff Ditech regarding redemption of the  
24 property was on Thursday February 8, 2018, only two working days before the expiration of the  
25 redemption period.

26 12. On Friday, February 9, 2018, counsel for Ditech emailed counsel for Saticoy Bay LLC  
27 requesting an extension of the 60 day redemption period.

13. On Sunday, February 11, 2018, counsel for Saticoy Bay LLC emailed counsel for Ditech to advise of the costs which would be claimed by Saticoy Bay LLC in the redemption amount.

14. In response to the February 11, 2018 email, counsel for Ditech again emailed requesting an extension of the period of redemption.

15. On February 12, 2018, the last date for redemption, counsel for Ditech requested counsel for Saticoy Bay confirm the amount needed to be tendered in order to redeem the property and proposed an amount it believed sufficient to redeem the property.

16. On February 16, 2018, after the expiration of the date for redemption, counsel for Ditech again requested that counsel for Saticoy Bay confirm the proposed redemption amount.

17. On February 19, 2018, after the expiration of the date for redemption, counsel for Saticoy Bay simply stated it would not accept Ditech's offer of tender without explanation.

18. Plaintiff Ditech failed to deliver a check in any amount to pay for the redemption before the redemption deadline.

## CONCLUSIONS OF LAW

1. The court finds as a matter of law that plaintiff Ditech Financial failed to timely tender the amount necessary to redeem its interest in the property within 60 days as required by NRS 116.3116(3) due to the delayed actions of plaintiff rather than any actions taken by defendants.

2. As a result of the failure of plaintiff Ditech to timely pay to redeem the property, Ditech Financial is not entitled to a preliminary injunction or other injunctive relief which would delay or impede delivery of a deed to Saticoy Bay pursuant to NRS 116.31166(7)(a).

3. There is no basis to equitably toll the date for redemption or to otherwise excuse the failure of plaintiff Ditech to timely redeem the property.

4. The court also finds that the foreclosure does not amount to a takings under the U.S. Constitution and that the foreclosure was not barred by the Supremacy Clause due to the FHA Insurance Program.

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**ORDER**

BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion for summary judgment on behalf of Saticoy Bay LLC Series 8891 Sanibel Shore is granted.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants on all of plaintiff Ditech Financial's claims and Saticoy Bay LLC Series 8891 Sanibel Shore's counterclaims.

IT IS FURTHER ORDERED that defendants Clearwater Cove Homeowners Association and/or its collection agent, Red Rock Financial Services may issue an appropriate foreclosure deed to defendant Saticoy Bay LLC Series 8891 Sanibel Shore Avenue.

DATED this 26th day of September, 2019



RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE

Respectfully submitted by:

LAW OFFICES OF  
MICHAEL F. BOHN, ESQ., LTD.

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Reviewed by:

WOLFE & WYMAN, LLP

By: /s/ /Andrew A. Bao, Esq./  
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Reviewed by:

TYSON & MENDES LLP

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